MASS. EA20.2:M24

THE MCP: 1995 REVISIONS FACT SHEET

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SUMMARY OF THE MAJOR REVISIONS TO THE MASSACHUSETTS CONTINGENCY PLAN (310 CMR 40.0000)

GOVERNMENT DOCUMENTS COLLECTION
29 1996

The Massachusetts Department of Environmental Protection (DEP) has revised the Massachusetts Contingency Plan ("MCP"; 310 CMR 40.0000) to further streamline the 1993 rules for reporting, assessing and cleaning up releases of oil and hazardous material. Most of the 1995 revisions took effect on February 1, 1995; new provisions which establish a "Downgradient Property Status" took effect on February 24, 1995.

The 1995 revisions were based on DEP's experience in the first 9 months of the redesigned program's operation with input from PRP's, LSP's, citizens, and members of the Waste Site Cleanup Program Advisory Committee.

This fact sheet summarizes the **major** changes within each MCP Subpart. Please note that it does not address every detail of the 1995 revisions.

Also, please note that DEP is planning to make further changes to the MCP this summer addressing Technical Assistance Grants, the definition of Potentially Productive Aquifer, Downgradient Property Status transfers and Remedial Discharge Regulations. A second fact sheet will be prepared to explain these changes.

SUBPART A: General Provisions

40.0006: Terminology, Definitions and Acronyms

Background

The definition of Background has been expanded to include those levels of oil and hazardous material that would exist in the absence of the disposal site of concern which are attributable to releases of water containing chloroform to groundwater from a public water supply system (chloroform is a by-product of chlorination treatment used by public water supply systems).

Hot Spot

Criteria have been added for identifying Hot Spots, a discrete area where the concentrations of oil or hazardous material are substantially higher than those concentrations in the surrounding area.

Potentially Productive Aquifer

This definition has been amended to eliminate those portions of mapped potentially productive aquifers (PPAs) that lie beneath municipalities with a population density of 4,400 persons per square mile regardless of the percentage of the total aquifer that underlies the municipality. DEP is continuing to explore ways to improve this definition and expects to propose a more specific definition in the Spring of 1995.

Sheen

Groundwater has been added to the list of types of waterbodies where a sheen may occur.

40.0008: Computation of Time Periods and Deadlines

This section has been revised to make it easier for people conducting response actions to know when they are complying with MCP deadlines by determining when timelines begin and when submittals to DEP are considered "received" by the agency.

The 1995 revision clarifies that the MCP requires response action submittals to be filed with DEP by specific deadlines in order to maintain compliance. When a document is filed with the appropriate DEP Regional Office, it is stamped with the date on which it was received.

- The "date stamped received" determines DEP's receipt of a submittal [see 310 CMR 40.0008(4)].

- To account for variable mail service, a 7 day "grace" period has been established. If the date stamped reflects a date within seven days of the date the submittal is due, the submittal will be deemed to have been received on time.

- A submittal will be considered "late" if it is received by DEP on the eighth day after the due date or later (this may have significant consequences; for instance, in the case of a late Tier Classification Submittal, the site would default to a Tier IB status and be assessed a Tier IB annual compliance fee of $2,600).

- There are some deadlines for which the 7 day "grace" period does not apply [these are listed in 40.0008(5)].

- Deadlines falling on a Saturday, Sunday or legal holiday run to the end of the next business day [see 40.0008(1)].

- Any person submitting a written RAM or IRA plan must use either certified mail or hand delivery [see 40.0008(5)(d)]. This provision was added so that the person filing the submittal will have a record of the beginning of the 21 day presumptive approval period.

40.0026: Special Projects

This provision was added to enable the Department to designate one or more preliminary response actions as Special Projects. This designation may occur in particular circumstances at the request of, or with the consent of, the person(s) undertaking response actions. This provision provides the Department and people undertaking response actions in certain defined situations with greater flexibility for scheduling cleanup activities and setting interim deadlines than is otherwise provided by the MCP. Special Project designation does not relieve parties from meeting the MCP performance standards for assessment and cleanup.

40.0035: Bill of Lading Form

Changes to 40.0035(5) extend the deadline for filing a completed Bill of Lading with DEP from 14 to 30 days after the date of the final shipment.

SUBPART B: Organization & Responsibilities

40.0120: Coordination with Responses by the U.S. Coast Guard to Discharges of Oil

A section addressing response actions undertaken by the U.S. Coast Guard and its related responsibilities has been added. The U.S. Coast Guard is required by federal law to respond to releases of oil into navigable waters and adjoining shorelines. While Chapter 21E also requires DEP to respond to such releases, DEP generally relies upon the Coast Guard for responses to small oil releases into navigable waters that are of unknown origin and that do not affect the shoreline.

Please note that these provisions do not apply to any release of oil into navigable waters for which the U.S. Coast Guard is an RP or PRP.

40.0167: Interim Deadlines

Several sections have been added to this section of the MCP. Most important is a section which states that an Interim Deadline imposed by the Department will be presumed reasonable and consistent with M.G.L. c. 21E and the MCP if the person required to comply with the Interim Deadline does not make a timely request for an extension of the deadline [see 40.0167(5)]. This presumption may be rebutted by the person that has been issued the Interim Deadline by submitting supporting evidence to DEP.

40.0170: The Role of RPs, PRPs, and Other Persons in Response Actions

The language of 40.0170(10), which allows Other Persons who have undertaken response actions at a site to discontinue such response actions without incurring liability under

Chapter 21E, has been modified to clarify the procedures an Other Person must follow to take advantage of this provision.

40.0173: Site Access Authorization

A provision has been added to allow the Department to designate one or more RPs, PRPs, or Other Persons (including their employees, agents and contractors) as the Department's authorized representatives to obtain site access [see 40.0173(4)].

40.0180: Downgradient Property Status (effective 2/24/95)

This new section establishes a new "Downgradient Property Status", which allows the owner of property that has been affected by a groundwater release on another property to reach an MCP "end point" without having to Tier Classify the site or clean it up for an RAO. This section spells out procedures that must be followed and responsibilities that must be met by the downgradient owner. A separate Fact Sheet describes these new provisions in more detail.

40.0191: Response Action Performance Standard (RAPS)

The MCP's overall performance standard has been renamed and clarified. Response Action Performance Standard. or RAPS, replaces Best Response Action Management Approach (BRAMA). This change clarifies the Department's original goal, to ensure that an appropriate level of diligence is applied toward response actions taken at disposal sites. The new name recognizes that there may not be one "best" approach to site remediation but rather that several acceptable alternatives may each satisfy MCP requirements.

SUBPART C: Notification of Releases & Threats of Release

40.0313: Releases Which Require Notification Within 72 Hours

A change has been made to the notification requirements for Underground Storage Tank (UST) sites. Reporting is now required when a release to the environment is indicated **within 10 feet of the exterior wall of the tank** as established by a measurement of total organic vapors in the headspace of a soil or groundwater sample equal to or greater than **100 parts-per-million** by volume. This change raises the headspace reporting threshold from 50 ppm to 100 ppm. Since piping is considered to be part of the tank system, the reporting threshold applies to samples taken within 10 feet of piping as well.

40.0315: Releases Which Require Notification Within 120 Days

This section now lists the occurrence of Non-Aqueous Phase Liquid (NAPL) with a

measured thickness equal to or greater that one-eighth inch but less than one-half inch [see 40.0135(4)] as a 120 Day Release Notification requirement. The presence of NAPL at 1/2" and greater still requires notification within 72 Hours. **Please note**: There is a typographical error in this section: "sunsurface" should read "subsurface".

40.0317: Releases and Threats of Releases Which Do Not Require Notification

Three new notification exemptions have been added to this section:

- releases to underground utility vaults and releases to the interior of a building, **provided such releases are completely contained** with no release to the environment [40.0317(19)]. For purposes of this exemption, completely contained means that no release to the environment outside of the vault or building exceeds a reporting threshold.

- releases of chloroform in groundwater attributable to naturally-occurring ecological processes and/or leakage or discharges of water containing chloroform from a public water supply system [40.0317(20)].

- releases of oil or waste oil less than a Reportable Quantity that result in a sheen on a surface water provided the release is handled in accordance with federal requirements, the sheen does not persist for more than 24 hours, and the sheen does not recur at the same location within any 30 day period [40.0317(21)].

40.0335: Retracting a Notification

This section clarifies how notification made to DEP can be retracted. Retractions are allowed when (a) a release did not actually occur; (b) conditions posing a threat of release did not actually exist: or (c) the reported release or threat of release did not meet one or more of the sets of notification criteria specified in 310 CMR 40.0300. Retractions must be made by the person who originally notified DEP or by an authorized employee or agent of a corporation that has notified. Retractions must be made in writing within 60 days of the original notification and must provide justification [see 40.0335(2)]. These retractions are subject to a 21-day presumptive acceptance.

40.0352: Reportable Quantities for Hazardous Material

Spills of unknown polychlorinated biphenyl (PCB) content are now presumed to contain less than 500 ppm PCBs, unless testing proves otherwise [see 40.0352(5)]. The practical effect of this change is that the Reportable Quantity for spills of unknown PCB concentration is now 10 gallons (instead of 1 gallon).

SUBPART D: Preliminary Response Actions & Risk Reduction Measures

40.0404: Timing of Response Actions

This section more specifically identifies actions that initiate the one year time frame for preliminary response actions. Releases and threats of release that occur at a disposal site after Tier Classification are not subject to the one year time frame, provided that response actions are being conducted at the disposal site in compliance with the provisions of the MCP.

40.0420: Requirements, Approvals, and Time Lines for Conducting IRAs

Several modifications were made in this section. The most significant changes are:

- In approving an "assessment only" IRA, DEP is approving only the concept that no actual remedial action is being taken in response to a 2- or 72-Hour release. However, DEP's review does not consider the details of the assessment to be performed [see 40.0420(5)].

- A 21-day presumptive approval for IRA Plans has been incorporated [see 40.0420(9)]. This change makes the IRA Plan review consistent with the current RAM presumptive approval process.

40.0421: IRAs That Do Not Require Prior Approval From the Department

At Underground Storage Tank closures, up to 100 cubic yards of contaminated soil, cumulative for the site, can be excavated and managed without prior DEP approval [see 40.0421(3)]. To be eligible, the release must not pose an Imminent Hazard, soils must be managed appropriately (as per 40.0030), and notification must be provided to the Department within the appropriate 2-Hour or 72-Hour deadline.

40.0443: Approvals Required to Conduct Release Abatement Measures

New provisions in 40.0443(7) require that remedial actions proposed in a Release Abatement Measure Plan be initiated within one year from DEP's approval of the plan. DEP will consider a Release Abatement Measure Plan that is not initiated within this timeframe to be invalid and unapproved.

40.0461: General Provisions for Utility-related Abatement Measures

Non-utility parties (e.g., property owners) can now perform Utility-related Abatement Measures to establish clean corridors for utilities. DEP may require documentation that the activity is required by the utility company.

SUBPART E: Tier Classification & Response Action Deadlines

40.0501: Scope and Applicability

Multiple discrete disposal sites located on a single parcel of land can be grouped under one Tier Classification [see 40.0501(6)].

An RP, PRP, or Other Person may undertake Phase II and Phase III Comprehensive Response Actions before Tier Classification without the Department's prior approval, unless it is specifically prohibited by the Department [see 40.0501(7)].

40.0520: Basis for Tier Classification

Disposal sites for which DEP does not receive by the One-Year Tier Classification deadline either a Response Action Outcome Statement, a Downgradient Property Status Submittal [see 40.0184(1)], or a Tier Classification Submittal (and if applicable an application for a Tier I Permit) will be categorically classified as Tier IB on the date of the applicable deadline [see 40.0520(2)].

40.0580: Periodic Evaluation of Temporary Solutions at Tier I and Tier II Disposal Sites

Neither a Permit Extension nor a Tier II Classification Extension is needed to perform the required periodic evaluation of a Temporary Solution.

SUBPART F: Transition Provisions

40.0610: Locations to Be Investigated

An RP, PRP or Other Person for a "Location To Be Investigated" (LTBI), unclassified disposal site, or non-priority disposal site without a waiver may rely on a **1988 MCP** PA or Phase I report which concluded no further remedial actions are necessary. To avail themselves of this provision, they must submit to DEP a statement of intent to rely on the report pending DEP approval, but now a consultant is no longer required to submit this statement. In addition, an RP, PRP or Other Person for an **LTBI** may now also rely on a **pre-1988 MCP** "no further action" recommendation, provided a notice of intent to rely on the report is submitted to DEP.

If an RP, PRP or Other Person with an LTBI, unclassified disposal site or non-priority disposal site does not submit a statement of intent to rely on a previously submitted report (as described in the above paragraph), or does not submit an LSP Evaluation Opinion by the applicable deadline, the site will be categorically classified as Tier IB on the date of the applicable deadline and assessed a Tier IB annual compliance fee.

40.0630: Nonpriority Disposal Sites with Waivers

Changes in this section clarify when the Tier II Classification for Waiver Sites expires. 40.0630(1)(d) states that the Tier II Classification for a waiver site expires on the date the Waiver is scheduled to expire. If a Waiver recipient fails to file either a Tier II Extension 60 days prior to the waiver expiration date, or a Waiver Completion Statement, or a Response Action Outcome Statement prior to the expiration of the Waiver, the site will be categorically classified as a Tier IB disposal site [see 40.0630(7)] and assessed Tier IB fees.

40.0640: Priority Disposal Sites

The Department may classify a priority disposal site as Tier IB pursuant to criteria and provisions within the MCP. Modifications to section 40.0640(2) clarify that a Tier IB classification will not become effective until the Department receives a signed and dated Transition Permit Statement. Until the Tier IB Classification takes effect, the Department will assess Tier IA annual compliance assurance fees.

SUBPART G: Tier I Permits

40.0703: Requirements for All Tier I Permit Applications

This section has been clarified to make more explicit the requirement that an applicant for a Tier I Permit must publish a notice announcing the classification or reclassification of the disposal site in the Environmental Monitor [see 40.0703(1)(i)].

Each application for a Tier I Permit must include a written declaration attesting that the applicable permit fee has been paid [see 40.0703(1)(c) & 40.0703(10)].

40.0707: Additional Application Submittal Requirements for Major Permit Modifications

Modifications to this section now allow the addition of one or more additional permittees to a Tier I Permit via a Major Permit Modification [40.0707(3)(f)].

SUBPART H: Comprehensive Response Actions

No major revisions were made to Subpart H.

SUBPART I: Risk Characterization

40.0902(3): Purpose of Risk Characterization

Modifications to 40.0902(3) clarify that Background is considered a level of No Significant Risk, even if background levels exceed MCP cleanup standards.

40.0932: Identification of Applicable Groundwater Categories

LSPs may now demonstrate, using site-specific information, that contaminated groundwater at a site is not hydrogeologically connected to a private well. If this demonstration is made and the private well was the only reason for classifying the groundwater as GW-1, the groundwater would no longer be considered to be in category GW-1 [see 40.0932(5)(d)(2)].

40.0933: Identification of Applicable Soil Categories

Changes to this section to clarify that current and foreseeable use must be considered in the soil categorization scheme. Also, use of surrounding property should be considered when categorizing soil [see 40.933(4)(a)].

40.0974: Identification of Applicable Groundwater Standards in Method 1

Method 1 cleanup standards have been developed for Barium and Vanadium.

Soil and groundwater standards for several polycyclic aromatic hydrocarbons (PAHs) were revised based upon the recently adopted U.S. EPA Relative Potency Values for PAHs. For example, the Method 1 S-3 standard for benzo[k]fluoranthene changed from 0.7 mg/kg to 40 mg/kg.

40.0982: General Approach to Method 2

Changes in 40.0982(3) clarify that Method 2 demonstrations may include modifying the Method 1 standards as well as eliminating exposure pathways.

40.0995: Method 3 Environmental Risk Characterization

This section has been rewritten to make the Environmental Risk Characterization procedure more clear.

SUBPART J: Response Action Outcomes

40.1012: Application of Activity and Use Limitations

Situations in which AULs are and are not required have been clarified:

- AULs are required when a Response Action Outcome is based on assumptions that Site Activity and Uses will be limited or restricted.

- A new exemption from AUL requirements was added, so that an AUL is not required **when residual contamination is deeper than 15 feet below the surface** [see 40.1012(2)(b)].

- AULs are used to control future exposures to residual contamination in soil. Once exposures are set and the soil is classified, the applicable cleanup standards must be identified and met.

- AULs may also be used where otherwise not prohibited, including with Temporary Solutions (e.g., to prevent use or installation of private wells while contaminated groundwater is being treated).

Changes to AUL forms have streamlined the language and have clarified when surveys are required. A new AUL form has been created for closing private wells that are not part of a disposal site.

SUBPART K: Audits and Compliance Assistance

The most significant change to Subpart K is the deletion of the section entitled "Compliance Assistance" (40.1150 of the 1993 MCP). The experience gained over the first year of program implementation revealed that the concept of Compliance Assistance was an on-going effort throughout the MCP process. Therefore, the activities that were once at the end of the process, and only conducted after an Audit, can now be implemented throughout the cleanup process.

SUBPART L: Cost Recovery, Lien Hearings & Petitions for Reimbursement

No significant changes were made to Subpart L.

SUBPART M: Administrative Record

No significant changes were made to Subpart M.

SUBPART N: Public Involvement and Technical Assistance Grants

40.1403: Minimum Public Involvement Activities in Response Actions

40.1403(9) has been added to allow an opportunity for public involvement in certain Immediate Response Actions or Release Abatement Measures. Interested citizens must follow specific provisions within this section in order to take advantage of this opportunity.

Revisions will be made in the next regulations package to streamline the Technical Assistance Grant process.

SUBPART O: The Numerical Ranking System and Scoring Instructions

The LSP Opinion in the NRS was revised to reflect language developed with the Licensed Site Professional Association.

SUBPART P: Massachusetts Oil and Hazardous Material List

The 1993 MOHML revisions reflected changes in source lists as of December 1991. The 1995 MCP revisions include changes made in the source lists as of June 30, 1994, and corrected errors in earlier versions of the MOHML. The result of the update included the addition of approximately 44 substances, several substance deletions, approximately 35 RQ changes, synonym changes and additions, and technical corrections. The largest number of changes were a result of changes in the U.S. DOT List. More specific information regarding changes to the MOHML can be obtained by contacting the MCP Hotline.

FOR YOUR INFORMATION...

The revised (January 13, 1995) MCP is available at the State House Bookstore in Boston and in Springfield. To order, please call either (617) 727-2834 in Boston, or (413) 784-1378 in Springfield for exact prices and postage charges.

Electronic copies of the 1/13/95 MCP are available through the DEP/ORS Computer Bulletin Board System; MODEM (617) 292-5546. For inquiries regarding the Bulletin Board, please call (617) 556-1052.

To help people understand the MCP revisions, DEP has produced a redline/strikeout version of the final MCP (excluding the Massachusetts Oil and Hazardous Materials List or "MOHML") which shows how the regulations have changed from the 1993 MCP. As a public service, the

following firms are making the redline/strikeout version available to the public:

The Engineering Center
One Walnut Street
Boston, MA 02108
Attn: Scott Leaver

Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111
Attn: Susan Phillips, Esq.

To obtain a copy of the redline/strikeout version, please send your request to either of the addresses above, and include a check or money order for $21.00 (made payable to "Mintz Levin" or "The Engineering Center", whichever is applicable).

For more information regarding the new MCP, call the "MCP Hotline", which is part of DEP's InfoLine, during regular business hours. Hotline staff are available to answer your questions and provide you with information on current policies, guidance and fact sheets and will return voicemail messages in the order that they are received. From area code 617 and outside Massachusetts, call (617) 338-2255. From area codes 413 and 508, call (800) 462-0444.

Prepared by DEP/BWSC, 4/24/95